

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3227 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

G.S.R.T. CORPORATION

Versus

KALUSING GOKAJI SOLANKI

Appearance:

MR HARDIK C RAWAL for Petitioner
NOTICE SERVED for Respondent

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 21/07/2000

ORAL JUDGEMENT

This petition which is filed under Article 227 of the
Constitution is directed against the award, dated
22.2.1988 rendered by the Labour court, Ahmedabad in

Reference (LCA)No. 629 of 1982 by which the petitioner is directed to reinstate the respondent in service with 50% back wages.

The respondent was in the employment of the petitioner Corporation as a conductor at the Ahmedabad division. He was prosecuted in a competent court for misappropriation of funds of the Corporation. On the same allegations, a departmental inquiry was held against him and at the conclusion of the departmental inquiry, he was dismissed from service vide order dated 7.7.1969. The respondent came to be acquitted in the criminal case which was registered against him vide judgment dated 29.12.1973. In the year 1982, he raised a dispute regarding his dismissal from service on the ground that no inquiry was held against him and that, he, having been acquitted by the competent court, was entitled to be reinstated in service with back wages. On failure of the conciliation proceedings, the dispute was referred to the Presiding officer, Labour court, Ahmedabad for adjudication and it was registered as Reference (LCA) No. 629 of 1982. The respondent filed his statement of claim to which a reply was filed by the petitioner. In the reply, it was inter alia contended that as the record was destroyed in terms of the rules and regulations governing destruction of records, it was not possible to produce the inquiry papers before the court and as the Reference was barred by the principles of delay and laches, the demand made by the respondent for reinstatement in service with back wages should be rejected.

The Labour court by the impugned award, directed the petitioner to reinstate the respondent in service with 50% back wages giving rise to the present petition.

Mr. Hardik Raval, learned advocate for the petitioner submitted that in cross-examination, it was admitted by the respondent that inquiry was held against him before the order of dismissal was passed and, therefore, the Labour court was not justified in directing reinstatement of the respondent in service with back wages. What was claimed was that reference of the dispute was 13 years after the order of dismissal was passed in the year 1969 and 9 years after the judgment was rendered by the criminal court acquitting the respondent and as the said Reference was barred by the principles of delay and laches, the petition should be allowed.

Though the respondent is duly served, he has neither appeared in person nor through an advocate. It may be noted that this petition was placed for admission before

the Division Bench and the Bench had admitted the matter and granted ad-interim stay of implementation and execution of the award on condition of the petitioner complying with provisions of Section 17-B of the Industrial Disputes Act, 1947 vide order dated 29.6.1988. Ad-interim relief was thereafter confirmed by another Division Bench vide order dated 21.11.1991. The claim advanced by the petitioner that record of inquiry conducted against the respondent was destroyed as per the rules and regulations relating to destruction of record, should not have been ignored by the Labour court. The summary of cross-examination of the respondent reproduced in the impugned award makes it abundantly clear that inquiry was held against the respondent before the order of dismissal was passed on 7.7.1969. Under the circumstances, I am of the opinion that the Labour court was not justified in holding that dismissal order, dated 7.7.1969 was passed without holding inquiry and was, therefore, liable to be set aside. Apart from this, there is no manner of doubt that there was unexplained delay in seeking the Reference. The Reference was sought after a period of about 12 years from the date of dismissal and 9 years after the date of judgment of the competent criminal court acquitting the respondent. The delay caused in seeking the Reference was not explained at all by the respondent in the statement of claim. Therefore, the Labour court could not have directed the petitioner to pay 50% back wages while ordering reinstatement in service. Learned counsel for the petitioner has stated at the Bar that it is the rule of the petitioner Corporation not to pay idle wages to a workman in a case where the High court directs the petitioner Corporation to comply with provisions of Section 17B of the ID Act and normally, workman is reinstated in service and paid wages. In view of this state of affairs, I am of the opinion that the order of reinstatement does not require to be disturbed, but the direction to pay 50% back wages being illegal, cannot be sustained.

For the foregoing reasons, the petition partly succeeds. The award of the Labour court directing the petitioner to reinstate the respondent in service is upheld, but the direction given by the Labour court to the petitioner to pay 50% back wages to the respondent is quashed and set aside. It is clarified that on the basis of reinstatement in service, the respondent shall not be entitled to any difference of salary. Rule is made absolutely accordingly. No order as to costs.

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